



U.S. Department of Justice

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Southern District of New York*

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One Saint Andrew's Plaza
New York, New York 10007*

September 25, 2013

BY EMAIL and ECF

The Honorable William H. Pauley
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Paul Dagerdas, et ano
S6 09 Cr. 581 (WHP)

Dear Judge Pauley:

The United States respectfully submits this letter concerning defendant Denis Field's motion to admit a portion of Robert Greisman's June 2005 deposition testimony. For the reasons set forth below, the defendant has failed to identify any prior statement by Mr. Greisman that is inconsistent with his trial testimony, and therefore the defendant's motion should be denied.

As the defendant acknowledges, prior testimony is admissible only if it is "inconsistent with the declarant's testimony." Fed. R. Evid. 801(d)(1)(A). Defendant Field argues that Mr. Greisman has made inconsistent statements regarding whether IRS notices like 2000-44 are influential, apparently because Mr. Greisman used the term "influential" in his trial testimony but did not use that term during his prior deposition testimony. But the fact that Mr. Greisman used different language does not mean that he testified inconsistently. Nowhere did Mr. Greisman testify during his prior deposition testimony that IRS notices are *not* influential. In fact, Mr. Greisman described in a similar manner the way in which the IRS notices have influence. In his trial testimony, he agreed with counsel's question that "IRS notices are essentially opinions or press releases from the IRS" and during his prior deposition testimony, Mr. Greisman similarly described IRS notices as "equivalent to press releases." Thus,

there is simply no basis to admit any portion of his deposition testimony under Rule 801(d)(1)(A).

For the foregoing reasons, defendant Field's motion to admit a portion of Mr. Greisman's prior deposition testimony should be denied.

Respectfully submitted,

PREET BHARARA
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